

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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MERCY MEDICAL CENTER – CLINTON
C/O HUMAN RESOURCES
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CLINTON IA 52732

Appeal Number: 04A-UI-02599-ET
OC 02-01-04 R 04
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 1, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 30, 2004. The claimant participated in the hearing with a former employee, Kathy Bott. Diane Grantz, Director of Human Resources, and Annette Zemek, Director of Home Medical Equipment, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time customer service coordinator for Mercy Medical Center

from April 30, 1984 to February 5, 2004. She was discharged for inappropriate use of the internet, conducting private business on company time and failure to remove private business papers from her office after repeatedly being told to do so. On November 2, 1998, the claimant received a written warning for fostering poor business relationships by not providing information to internal and external customers, telling the accounting office that she did not have the capability to run a tax report when she actually had a computer program that could provide the information and not taking calls from certain customers or accounting employees that she did not like to work with. The claimant signed the warning but testified she did so "under duress." On July 27, 1999, the claimant received a verbal warning for abuse of the internet after other employees complained the claimant was on the internet rather than doing her work and the employer determined she accessed several nonwork-related websites during work hours and suspended her internet privileges for 18 months. The claimant denies using the internet except during breaks, lunch or after work. On August 7, 2001, the claimant received a verbal warning for taking a one-hour lunch break without clocking out. On October 22, 2002, the claimant received a written warning for leaving the premises without clocking out, accessing confidential payroll information without authorization, conducting personal business during work hours and loading unauthorized software on her computer and playing solitaire during work hours. The claimant testified the only times she left without clocking out were if she was on company business, only accessed the payroll information to obtain her own time sheet and denied loading unauthorized software but testified she did put a disk in the computer and detached a solitaire game onto the computer and then played solitaire for approximately 20 minutes while on hold. On May 19, 2003, the claimant received a written warning and three-day suspension for conducting her private dog training business while at work, difficulty getting along with co-workers and creating a hostile work environment in that other employees were intimidated by the claimant and did not feel they could go to her with questions or problems. An employee made a cash-posting error and the check was lost. The employee covered the check out of her own pocket because she was afraid to talk to the claimant about the situation and the employer learned of that incident when the lost check was later found. The claimant denied any problems with co-workers and while she was on suspension, Diane Grantz, Director of Human Resources, talked to two of the claimant's co-workers about how well she interacted with other employees and both said it was difficult to work with the claimant because she was intimidating. When the claimant returned from the suspension on May 23, 2003, the employer presented her with a performance improvement plan detailing the work issues and behaviors previously discussed and the employer's expectations and the claimant signed the plan. On September 2, 2003, the claimant received a written warning for doing calligraphy homework at her desk for a class she was taking. On December 5, 2003, the employer met with the claimant to present her yearly evaluation, which stated she needed to improve her work habits and initiative and the claimant was reminded to take any personal business documents home. The claimant later told the employer she had removed all of her personal papers but the employer found approximately two years worth of financial documents in her desk after she said she took them home. Ms. Grantz was also present during the evaluation and discussion of the issues. The claimant signed the evaluation and was denied her lump sum bonus at that time but was told she would be reevaluated in 90 days. On January 30, 2004, Director of Home Medical Equipment Annette Zemek found several personal business files on the claimant's computer, related to her dog training business, that had been modified at work during business hours after the claimant had been instructed she could not conduct any personal business while at work. The information services department provided Ms. Zemek with a 40-page list of nonwork-related websites accessed by the claimant during business hours in January 2004. The employer terminated the claimant's employment on February 5, 2004.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code Section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer warned the claimant at least six times not to conduct her personal business at work and not to use the employer's computer to do so. Despite the warnings, however, the claimant continued to disregard the policies. While the claimant contends the information services manager gave her permission to back up her home-computer personal business files on the employer's computer system, that seems unlikely given the employer's computer policies and the claimant did not offer that explanation to Ms. Grantz or Ms. Zemek when she received the warnings or when she was terminated, nor did she supply testimony or a statement from the information services manager confirming her assertion. The claimant initially denied accessing nonwork-related internet sites at all but then testified she did so but only during her breaks and lunch periods. The employer

credibly testified the claimant usually spent her breaks outside on the patio, however, and that the records provided by the information services department showed 40 pages of nonwork-related sites accessed by the claimant in January 2004 alone that were not all viewed during breaks or lunch. The claimant also disputes that she had difficulty getting along with her co-workers and testified she asked co-workers if they had any issues with her and they denied it. However, Ms. Grantz spoke to two of the claimant's co-workers at the time of her suspension in response to the claimant's denial of the problem and the other employees indicated the claimant was intimidating and difficult to work with and it is not unreasonable to conclude that employees confronted by the claimant might be uncomfortable discussing the problems they had with her under the circumstances. The claimant believes the employer began a process of trying to force her out of her job when Ms. Zemek became Director of Home Medical Equipment four years ago and cites the fact other employees have left or been discharged during that time as well. Although Ms. Zemek may have been more strict in enforcing the employer's policies, the claimant was warned several times about the employer's expectations that employees not conduct personal business at work or spend work time on the internet and she continued to disregard the policies. The warnings and suspension put the claimant on notice that further incidents could result in termination but she did not modify her behavior to comply with the employer's policies. The claimant's conduct demonstrated a willful or wanton disregard of the employer's interests as is found in deliberate violation or disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. Consequently, the administrative law judge concludes the employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The March 1, 2004, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

je/d